THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

And

THE HON'BLE SRI JUSTICE D.APPA RAO

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WRIT PETITION No.10558 of 2006

ORDER: (per the hon'ble Sri Justice L.Narasimha Reddy)

The petitioner is a steel re-rolling industry. For the year 2000-01, it submitted returns to the first respondent and an order of assessment was passed. Aggrieved thereby, the petitioner preferred an appeal before the second respondent. On the ground that the memorandum of appeal was not accompanied by a challan, with the deposit of 12.5% of the disputed tax, the second respondent dismissed the appeal in *limini.* The petitioner preferred Second Appeal against the same before the Sales Tax Appellate Tribunal, by taking the plea that the amendment to the A.P.General Sales Tax Act requiring deposit of 12.5% is operative for the subsequent years and since the assessment relates to the period prior to amendment, it is not under obligation to deposit the said amount. The petitioner also filed an application for stay of collection of the tax due, pending the second appeal, before the Joint Commissioner of Commercial Taxes. The grievance of the petitioner is that even while the application for stay is pending, the first respondent is taking coercive steps to recover the tax due.

Heard the learned counsel for the petitioner and the learned Special Government pleader for Commercial Taxes.

The necessity for the petitioner to avail the remedy of Second appeal arose, on account of the dismissal of the appeal by the second respondent in *limini*. The sole ground for dismissal of the appeal is the failure on the part of the petitioner to make a pre-deposit of 12.5% of the tax due. After making elaborate submissions, the learned counsel for the petitioner ultimately submits that his client is prepared to make the deposit of 12.5%, without prejudice to his rights to canvass the matter on merits. With this development, the very Second

Appeal becomes redundant, and the matter deserves to be relegated to the second respondent for registration of the appeal and disposal of the same on merits.

Hence, the Writ Petition is disposed of, directing that in case the petitioner makes pre-deposit of 12.5% of the disputed tax and presents the appeal afresh, within a period of two (2) weeks from today, the second respondent shall entertain the same, without any objection, and decide the matter on merits. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

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(D.APPA RAO, J)

30th May, 2006.

Jsu/sh

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

And

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.10558 of 2006

Date: 30.05.2006